

Before the  
Federal Communications Commission  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

)  
Review of Commission Consideration of )  
Applications Under the Cable Landing )  
License Act )  
)

IB Docket No. 00-106

**Reply Comments of Cable and Wireless USA, Inc.**

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## EXECUTIVE SUMMARY

Cable and Wireless USA, Inc. ("C&W") applauds the Federal Communications Commission's ("FCC" or "Commission") initiation of a proceeding to streamline the cable landing licensing process.<sup>1</sup> The eleven parties filing comments in this rulemaking, including C&W, also strongly support the Commission's streamlining objectives. Regardless of their individual interests, these commenters agree with the Commission's decision to streamline the cable landing license process in order to "ensure expeditious action on [cable landing license] applications" and "provide incentives for the development of facilities-based competition and capacity expansion to meet increasing demand" in an industry where speed to market is crucial.<sup>2</sup> Such streamlining also would help ensure that the submarine cable industry, which already is highly competitive, remains so.

The general industry consensus—revealed in the comments—is that adoption of either an automatic grant process or another bright line test for determining eligibility for streamlined review would best ensure that competition in the industry continues to grow and that the objectives set forth in the *Notice* are achieved. C&W joins AT&T, Sprint, and 360networks in specifically recommending that the Commission adopt an automatic grant approach similar to that employed for Section 214 applications. Under the broad streamlining initiative proposed by C&W:

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<sup>1</sup> See Review of Commission Consideration of Applications Under the Cable Landing License Act, IB Docket No. 00-106, FCC 00-210 (Notice of Proposed Rulemaking) (rel. June 22, 2000) ("*Notice*").

<sup>2</sup> *Id.*, ¶ 2.

- all applications for cable landing licenses would presumptively qualify for streamlined review;
- public comment on such applications would not be routinely sought;
- the Commission would act on streamlined applications no later than 60 days after release of the public notice accepting the applications for filing; and
- the FCC would grant cable landing licenses by public notice.

The Commission should also work with the State Department to streamline its review of cable landing license applications. The majority of commenters, including C&W, recommend that the FCC and the Executive Branch negotiate a target time frame for Executive Branch approval that falls within the time frame established by the Commission for streamlined processing. Further, a number of commenters agree with C&W that, in rare circumstances where the Executive Branch is unable to approve an application within the jointly established time frame, the FCC could issue a public notice indicating that the license would be granted automatically upon receipt of State Department approval.

All commenters, including C&W, unanimously oppose adoption of the streamlining approach outlined in the *Notice*. C&W agrees with those commenters noting that the proposed streamlining initiative would fail to achieve the Commission's streamlining objectives. In direct contrast, the streamlining approach outlined in the *Notice* would increase regulatory uncertainty by requiring complex and burdensome competitive demonstrations, would increase the costs of applying for a cable landing license, would defeat the objective of reducing regulatory delays and market risks for applicants, and could prove counterproductive by deterring those eligible under the streamlining rules from taking advantage of streamlined processing.

C&W also urges the Commission to reject both of Global Crossing's proposals—the first one as set forth in the *Notice* and the second as described in Global Crossing's comments. Neither of Global Crossing's proposals will simplify the cable landing licensing process. Moreover, adoption of either Global Crossing proposal would place equity owners of consortia submarine cables at a competitive disadvantage compared to equity owners of entrepreneurial submarine cables. The Commission should adopt streamlining measures that protect competition, not competitors. Finally, the record clearly indicates that Global Crossing stands alone in its advocacy of these proposals.

With respect to streamlining other aspects of cable landing license regulation, C&W recommends the following:

- adoption of an applicant test that requires only landing station owners to be applicants,
- modification of the Commission's regulatory fees,
- adoption of an "opt-out" licensing approach,
- elimination of disclosure requirements for foreign carrier interlocking directorates, and
- adoption of application forms and electronic filing options.

Implementation of C&W's proposed streamlining actions would result in a simple and transparent cable landing license approval process, thus promoting the public interest in continued competitive growth in the submarine cable industry.

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**Reply Comments of Cable and Wireless USA, Inc.**

Cable and Wireless USA, Inc. ("C&W"), by its attorneys, hereby submits its reply comments in response to the above-captioned Notice of Proposed Rulemaking ("*Notice*") concerning streamlining of cable landing licensing procedures.<sup>1</sup>

**I. INTRODUCTION**

All commenters, including C&W, express overwhelming support for the Federal Communications Commission's ("FCC" or "Commission") decision to streamline the cable landing licensing procedures. The eleven parties filing comments in this proceeding are representative of the undersea cable industry.<sup>2</sup> The parties submitting

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<sup>1</sup> See Review of Commission Consideration of Applications Under the Cable Landing License Act, IB Docket No. 00-106, FCC 00-210 (Notice of Proposed Rulemaking) (rel. June 22, 2000) ("*Notice*").

<sup>2</sup> In addition to C&W, the following parties filed comments on August 21, 2000: AT&T Corp. and its affiliates Concert Global Networks USA L.L.C. and Concert Global Network Services Ltd. ("AT&T"); Global Crossing Ltd. ("Global Crossing"); 360networks Inc. ("360networks"); FLAG Telecom Holdings Limited ("FLAG"); Level 3 Communications, LLC ("Level 3"); Caribbean Crossings, Ltd. ("Caribbean Crossings"); WorldCom, Inc. ("WorldCom"); Sprint Communications Company L.P. ("Sprint"); Viatel, Inc. ("Viatel"); and Tycom Networks (US) Inc. ("Tycom").

comments include equity owners of traditional consortia submarine cables, equity owners of entrepreneurial submarine cables, equity owners of both traditional and consortia submarine cables, and submarine cable manufacturers. Despite their divergent business interests, these commenters agree with the Commission's stated streamlining objectives to "provide more certainty and flexibility for participants in the application process, to promote increased investment and infrastructure development by multiple providers, and to decrease application processing times."<sup>3</sup>

Streamlining that achieves the FCC's stated public policy goals will also ensure that competition in the submarine cable market continues to grow. Virtually all of the commenters concur with C&W's conclusion that the submarine cable industry is, and continues to become more, competitive and that the expansion of capacity inherently is pro-competitive.<sup>4</sup> Moreover, the hard evidence in the record indicates that the submarine cable industry already is competitive—and becomes more so every day.<sup>5</sup>

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<sup>3</sup> Notice, ¶ 3.

<sup>4</sup> C&W Comments at 5, 8 (noting that "significant growth in international transport capacity . . . continues today" and that "the grant of an application to construct a new cable adds capacity and encourages production of competing facilities"). Of the other ten parties filing comments, eight—including Global Crossing—believe the submarine cable industry is competitive. Caribbean Crossing Comments at 2 (characterizing the industry as "highly competitive"); AT&T Comments at 6 (noting that there is "vigorous and sustainable competition among many competing providers of international transport" and that "[c]apacity has exploded"); Viatel Comments at 5; Sprint Comments at 22 (characterizing the undersea cable industry as "competitive"); WorldCom Comments at 1 (noting the "explosive growth in advanced global telecommunications services"); FLAG Comments at 5 (noting the exponential growth of capacity on the transatlantic and transpacific routes); Global Crossing Comments at 9; Level 3 Comments at 1.

<sup>5</sup> C&W Comments at 4-9; AT&T Comments at 6 ("[E]ven a cursory review of the (Continued...)



Undersea cable capacity has grown exponentially in the last three years.<sup>6</sup> At the same time that capacity has exploded, concentration in the undersea cable industry has declined and prices for wholesale capacity have “fallen dramatically.”<sup>7</sup>

The record reveals a general agreement amongst participants in the submarine cable industry that the FCC should adopt a bright line test for determining whether an application qualifies for streamlined processing. As discussed below, C&W, AT&T, 360networks, and Sprint support adoption of an automatic grant approach modeled after the Section 214 process. This approach would satisfy the FCC’s streamlining objectives far better than adopting the unwieldy and potentially counterproductive initiatives set forth in the *Notice* and proposed by Global Crossing.<sup>8</sup>

Finally, C&W agrees that the Commission should streamline other aspects of cable landing license regulation. Specifically, the FCC should:

- adopt an applicant test that requires only landing station owners to be applicants;
- modify its regulatory fees;
- adopt an “opt-out” licensing approach;

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empirical evidence demonstrates vigorous and sustainable competition among many competing providers of international transport.”).

<sup>6</sup> FLAG Comments at 5, citing Separate Statement of Commissioner Ness.

<sup>7</sup> AT&T Comments at 6-7. See also C&W Comments at 5-8.

<sup>8</sup> Global Crossing stands alone in urging its own parochial proposal that would impose complicated and confusing rules that only serve to create additional regulatory delays, burdens and inefficiencies. Global Crossing does so because it is seeking to gain a leg up on the competition between the entrepreneurial cables that it builds, and the consortium cables that major common carriers often build. See Global Crossing Comments at 3, 11-12.

- eliminate disclosure requirements for foreign carrier interlocking directorates, and
- adopt application forms and electronic filing options.

Adoption of these streamlining measures will achieve the Commission's streamlining objectives of providing more certainty and flexibility for participants in the application process, reducing application processing times, and promoting greater investment and infrastructure development by multiple providers.

## **II. THE FCC SHOULD ADOPT A STREAMLINING APPROACH MODELED AFTER THE SECTION 214 PROCESS**

All commenters, including C&W, recommend adoption of either an autogrant process or other "bright line" test modeled after the Section 214 process.<sup>9</sup> These commenters believe that adopting a Section 214-like streamlining approach will serve the public interest. Among the benefits, commenters suggest that automatic grants and

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<sup>9</sup> Cable and Wireless Comments at 1-2 ("C&W believes that the Notice's objectives can be best achieved by the Commission's adoption of an automatic grant approach similar to that employed for Section 214 applications."); Tycom Comments at 3 ("[T]he Commission should instead adopt a single bright-line rule."); FLAG Comments at 3 ("The proposed streamlining options should be further refined to make the application processing procedures more simple and straightforward."); Level 3 Comments at 3 ("Level 3 recommends a more streamlined approach to the submarine cable landing licensing process . . . ."); Caribbean Crossing Comments at 3-4; Viatel Comments at 2 ("Viatel urges the Commission to adopt a simple, straightforward approach . . . ."); 360networks Comments at 8 ("360networks recommends that the Commission start from the presumption that all applications for the addition of a new cable qualify for streamlined review."); WorldCom Comments at 8 ("The Commission should propose simple bright line tests for cable landing license applications."); Sprint Comments at 18 ("The Commission should instead attempt . . . to grant all landing license applications as quickly as possible."); AT&T Comments at 4-10. Notably, even Global Crossing, which differs from the other commenters with respect to how applications should qualify for streamlined treatment, nevertheless recommends "streamlined treatment similar to the Section 214 licensing process." Global Crossing (Continued...)

other bright line streamlining methods are “easy to understand and apply,”<sup>10</sup> are “difficult to dispute,”<sup>11</sup> and could foster competition.<sup>12</sup>

To best achieve these public interest benefits, C&W recommends that the Commission adopt an automatic grant approach.<sup>13</sup> Under C&W’s preferred streamlining method: (1) all applicants would presumptively qualify for streamlined processing;<sup>14</sup> (2) the FCC would not routinely seek public comment and any comment filed would not automatically remove an application from streamlined processing;<sup>15</sup> (3) the FCC would act on streamlined applications within 60 days or less;<sup>16</sup> and (4) licenses would be granted by public notice.<sup>17</sup> As demonstrated below, many of the other commenters echo the benefits of C&W’s favored streamlining method.

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Comments at 29.

<sup>10</sup> WorldCom Comments at 5. See *also* Tycom Comments at 3 (supporting tests that are “easily applied based on readily available information.”).

<sup>11</sup> Tycom Comments at 3.

<sup>12</sup> Caribbean Crossing Comments at 3 (recommending streamlining so that “competition and improved technology can flourish”).

<sup>13</sup> C&W Comments at 9-10.

<sup>14</sup> *Id.* at 17.

<sup>15</sup> *Id.* at 16-17.

<sup>16</sup> *Id.* at 12-13.

<sup>17</sup> *Id.* at 11-12.

**A. All Cable Landing License Applications Should Presumptively Qualify For Streamlined Processing**

C&W urges the Commission to adopt the view, also advocated by AT&T, 360networks, and Sprint, that all, or nearly all, applications should qualify for streamlined processing.<sup>18</sup> Streamlining the vast majority of applications will result in the swift grant of applications. As Sprint notes, “[i]t is difficult to conceive of a situation where additional capacity would present competitive or other public interest concerns.”<sup>19</sup> In light of the competitive benefits each new submarine cable brings, C&W agrees with Caribbean Crossing that streamlined processing should extend even to submarine cables that land in non-World Trade Organization (“WTO”) Member countries.<sup>20</sup>

C&W encourages the Commission to reject use of streamlining criteria that increase regulatory uncertainty, add regulatory delay, or create market risk. As

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<sup>18</sup> C&W Comments at 17 (“C&W suggests that all applications for cable landing licenses should initially qualify for streamlined processing.”); AT&T Comments at 11-12 (“... the Commission should rule, consistent with basic economic theory, that submarine cable landing licenses are presumptively pro-competitive and qualify for expedited treatment.”); 360networks Comments at 8 (recommending that “the Commission start from the presumption that all applications for the addition of a new cable qualify for streamlined review”); Sprint Comments at 18 (advocating streamlined treatment “even where a landing license applicant was a carrier affiliated with a foreign carrier possessing market power in a WTO member country where the cable landed...”).

<sup>19</sup> Sprint Comments at 18.

<sup>20</sup> Caribbean Crossing Comments at 3-4. At a minimum, however, the FCC should streamline those applications for cables that land in WTO Member countries. As Sprint notes, this approach is supported by the FCC’s strong presumption in favor of granting cable landing licenses even where the applicant is affiliated with a foreign carrier that possesses market power in the landing WTO Member country. Foreign Participation Order, 12 FCC Rcd 23891, 23933-34 (1997), *recon. pending*. See Sprint Comments at 19 (noting that the “simple and salutary policy” set forth in the Foreign Participation Order should “continue to be followed.”).

explained below, such counterproductive proposals received only sporadic support among commenters. First, the Commission should not require the insertion of pro-competitive conditions in construction and maintenance agreements as a condition for streamlining. This approach received the endorsement of only two commenters—Viatel and WorldCom—and even then only as an alternative for applicants not satisfying other eligibility criteria.<sup>21</sup> WorldCom appropriately rejects primary reliance on pro-competitive conditions because it is “more burdensome than the bright line presumptions. . . .”<sup>22</sup>

Second, the Commission should not undertake a complicated examination of whether owners of capacity on the submarine cable are affiliated with a foreign dominant carrier on the route served. This approach received the support of only Viatel and Tycom, whose views are divided on which owners of capacity should be included in the affiliation determination—Viatel asks the Commission to focus solely on the controlling submarine cable owner and Tycom would include any owner of submarine cable capacity, even an owner of insignificant amounts, in the affiliation determination.<sup>23</sup> To the extent that entrepreneurial cable owners have competitive concerns about the activities of U.S. common carriers affiliated with foreign carriers, existing dominant

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<sup>21</sup> Viatel Comments at 5 (“In the alternative, . . . the applicant still will qualify for streamlined treatment if it agrees to comply with certain pro-competitive conditions.”); WorldCom Comments at 12-13. (“Second, if the applicant cannot [comply with the primary criteria], then the Commission should permit the applicant to make a showing that the proposed cable contains pro-competitive conditions.”).

<sup>22</sup> WorldCom Comments at 12.

<sup>23</sup> Viatel Comments at 5; Tycom Comments at 3-4.

carrier regulation already provides a remedy.<sup>24</sup> In light of the FCC's ability to achieve its policy goals through existing regulation, the FCC should not adopt a streamlining approach that creates additional, duplicative, and complicated rules that clearly lack the support of the submarine cable industry.

Finally, the Commission should reject WorldCom's requested examination of whether foreign carriers with market power control landing stations and provision of backhaul at the foreign end of a proposed submarine cable.<sup>25</sup> This approach fails to recognize that the construction of all submarine cables—even cables where a dominant foreign carrier exercises control over the foreign landing point—brings competitive benefits.<sup>26</sup> Furthermore, the United States has already committed to rely on the WTO Basic Telecom Agreement market opening commitments to address this concern. The FCC should recognize and rely upon these obligations here.<sup>27</sup>

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<sup>24</sup> 47 C.F.R. § 63.10(a)(2)-(3).

<sup>25</sup> WorldCom Comments at 11-12. Again, WorldCom—the sole supporter of this streamlining method—endorsed this approach only as an alternative for those applicants not satisfying primary eligibility criteria.

<sup>26</sup> C&W Comments at 8 (“As a general principle, the grant of an application to construct a new cable adds capacity and encourages production of competing facilities. This concept holds true without regard to existing cable capacity on the route. On currently unserved routes, the grant of a cable landing license will initiate service for the first time. On routes served by only one cable, adding a second cable will massively increase capacity and introduce competition. Even if two or more cables already serve the route, one more cable will always heighten competition.”); AT&T at 11-12 (“the Commission should rule, consistent with basic economic theory, that submarine cable landing licenses are presumptively pro-competitive”); 360networks at 3 (“a streamlined process should presume that the addition of a new cable on any route will promote competition”).

<sup>27</sup> AT&T Comments at 10 (“The Commission has previously made clear that in the (Continued...)”).

**B. Comments On Streamlined Applications Should Not Be Requested Or Serve To Remove An Application From Streamlining**

Commenters expressing a view agree with C&W that, regardless of the streamlining criteria selected, the FCC should not solicit comments on competitive and other issues.<sup>28</sup> Furthermore, commenters agree that oppositions that are filed should not automatically remove an application from streamlined processing.<sup>29</sup> Commenters prefer this approach because it is consistent with the Commission's successful

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wake of the WTO Agreement that it will not condition entry into the U.S. market on the basis of such foreign-end market access—even in those WTO Member countries where *all* competition is precluded as a matter of law and all communications services are provided through monopoly carriers. And even if that were not the case, refusing to license cables that would land in monopoly foreign markets (or delaying approval of such applications) is likely to do little to get those countries to open their markets to competition in view of the ease with which they may now route their U.S.-bound traffic through third countries following the WTO Agreement.”) (emphasis in original).

<sup>28</sup> See e.g., C&W Comments at 16 (“The initial public notice listing the cable landing license applications that have been accepted for filing should not solicit public comments.”); WorldCom Comments at 15 (recommending that the FCC “decline to routinely seek comment on competitive or other issues. . .”); Global Crossing Comments at 29 (stating its position that “the Commission should not solicit comment from the public regarding cable landing license applications that [qualify for streamlined treatment].”); AT&T Comments at 12 (“Further, the Commission should, as it does in the international Section 214 context, refuse to entertain petitions to deny.”); 360networks Comments at 8 (proposing that “within the first fourteen days (14) days from the date upon which the application is placed on public notice, a party may petition to deny the application streamlined processing.”).

<sup>29</sup> Level 3 Comments at 12 (noting that oppositions should not remove an application from streamlined treatment and urging “that the Commission automatically grant a streamlined application, even if oppositions are filed, unless the Commission staff independently determines that the application raises extraordinary issues”); WorldCom Comments at 16 (“Similarly, in cases where comments or oppositions to a streamlined Cable Landing License application are filed, the Commission should not delay grant of the license.”); see 360networks Comments at 8 (noting that the Commission should ignore “strike” petitions).

procedures for streamlining Section 214 applications<sup>30</sup> and provides the real benefits of “added certainty”<sup>31</sup> and “decrease[d] . . . regulatory entry barriers.”<sup>32</sup> It also prevents applications from being “held up by a vaguely drafted petition to deny filed by its competitors.”<sup>33</sup> If competitive concerns do exist, the commenters agree that the FCC should remove an application from streamlined processing by notifying the applicant and issuing a public notice to that effect within a specified period of time—preferably no more than 21 days.<sup>34</sup>

### **C. Licenses Should Be Granted Within 60 Days**

The vast majority of commenters agree that the period of time for the FCC to grant applications should be no longer than the 60 days proposed in the *Notice* and supported as an outer limit by C&W, Sprint, and 360networks.<sup>35</sup> C&W enthusiastically

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<sup>30</sup> WorldCom Comments at 15-16; AT&T Comments at 12, 38.

<sup>31</sup> WorldCom Comments at 16; see also C&W Comments at 17 (noting that refusing to accept comments will avoid “causing needless delay or uncertainty for applicants”).

<sup>32</sup> AT&T Comments at 12.

<sup>33</sup> WorldCom Comments at 16-17.

<sup>34</sup> C&W Comments at 16-17 (“Instead, if there are compelling public interest concerns warranting non-streamlined processing, the FCC should remove an application from the streamlined grant process by notifying the applicant within twenty-one days of the initial public notice”); 360networks at 8 (“If the Commission is of the view . . . that the application raises legitimate competitive concerns, it will issue a public notice, within twenty-eight (28) days of the public notice of the filing, announcing that the application will not be reviewed on a streamlined basis.”) (citation omitted); AT&T at 12 (proposing as a “safety net” that the FCC could “pull out of the streamlining queue those applications that ‘raise extraordinary issues suggesting a need for public comment’”).

<sup>35</sup> *Notice*, ¶ 54; C&W Comments at 12-13; Sprint Comments at 17; 360networks (Continued...)



supports the FCC's adoption of shorter time frames suggested by other commenters, shown below, provided Executive Branch approval could also be obtained during the shorter processing period.

Commenter	Proposed Streamlined Processing Time
WorldCom	30 or 45
Global Crossing	30
Level 3	21
AT&T	14
FLAG	14

#### **D. Licenses Should Be Granted By Public Notice**

About half the commenters, including C&W, urge the FCC to replace orders granting cable landing licenses with public notices granting licenses.<sup>36</sup> The comments filed by 360networks, WorldCom, and C&W make clear that the FCC has the authority to issue cable landing licenses by public notice rather than by individual order.<sup>37</sup>

Specifically, issuance of a public notice grant would satisfy the "written license"

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Comments at 9; WorldCom Comments at 13, 14 n.24; Global Crossing Comments at 30; Level 3 Comments at iv, 11-12; AT&T Comments at 3, 12; FLAG Comments at 12. Caribbean Crossing, Viatel and TyCom did not express a view on the time frame within which streamlined applications should be granted.

<sup>36</sup> 360networks Comments at 9; WorldCom Comments at 14; Global Crossing Comments at 30; AT&T Comments at 38; C&W Comments at 11. C&W also agrees with WorldCom that the Public Notice should contain essential facts about the Cable Landing License (e.g., landing points, initial capacity, system design, and owners, their percent ownership and foreign affiliations). WorldCom Comments at 15.

<sup>37</sup> WorldCom Comments at 14; 360networks Comments at 9; C&W Comments at 11; *but see* Global Crossing Comments at 30 (stating that the Commission should instead issue "a written license rather than simply rely on the issuance of a public (Continued...)

requirement of the Cable Landing License Act because, as WorldCom persuasively states “the Public Notice is itself a writing and constitutes a governmental authorization. Further documentation is superfluous.”<sup>38</sup> Not only is the public notice approach consistent with Commission authority, but it will also serve the public interest. Commenters note that issuing a public notice rather than an order will “lessen regulatory delay,”<sup>39</sup> “conserve valuable staff time and resources,”<sup>40</sup> “enable[ ] [carriers] to plan for entry,”<sup>41</sup> and “respond more quickly to consumer capacity needs.”<sup>42</sup>

### **III. THE FCC AND STATE DEPARTMENT JOINTLY SHOULD STREAMLINE THEIR REVIEW PROCESSES**

Every Commenter expressing a view supports the FCC's adoption of a streamlining method that would ensure timely grant of cable landing licenses by “reduc[ing] the review time at the State Department.”<sup>43</sup> Further, the majority of commenters agree with the guiding principle, endorsed by C&W, that the FCC and Executive Branch jointly should negotiate a time period for Executive Branch approval

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notice.”).

<sup>38</sup> WorldCom Comments at 14. See 360networks Comments at 9 (“Granting an application by public notice will satisfy the requirement under the Cable Landing License Act (“CLLA”) that grants be issued by ‘written license’ if the public notice includes the routine conditions for grant of such licenses.”); C&W Comments at 11.

<sup>39</sup> C&W Comments at 11.

<sup>40</sup> WorldCom Comments at 14.

<sup>41</sup> *Id.*

<sup>42</sup> C&W Comments at 11.

<sup>43</sup> Caribbean Crossing Comments at 2. See C&W Comments at 14; Flag Comments at 12-13; Level 3 Comments at 12; Tycom Comments at 20.

that enables the FCC to grant cable landing licenses within the time frame established for streamlined processing.<sup>44</sup> As noted previously, C&W, Sprint, and 360networks encourage streamlined processing of cable landing license applications within 60 days. Thus, 60 days would also be the appropriate outer limit for Executive Branch review. If obtainable, C&W endorses a shorter period of Executive Branch review, such as the 30 day period proposed by Global Crossing and Caribbean Crossing or the “streamlined 2-week procedure” suggested by Level 3 for processing cable landing license applications. The Commission should avoid, however, adopting a time limit that is too short for the Executive Branch to approve the vast majority of applications.

Should the Executive Branch be unable to approve a submarine cable project within the jointly established time frame, C&W further supports Caribbean Crossing’s proposal that would allow the Executive Branch to put a “hold” on an application.<sup>45</sup> Under such circumstances, C&W recommends that the Commission issue a public notice indicating that the license “will be deemed granted upon FCC receipt of final approval by the Department of State.”<sup>46</sup> Global Crossing, FLAG, and Level 3 join in recommending conditional license grants.<sup>47</sup> C&W cautions, however, that issuance of

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<sup>44</sup> Six commenters support the FCC’s proposal to negotiate a time frame for Executive Branch review. C&W Comments at 14; Caribbean Crossing Comments at 2; Tycom Comments at 19-20; Level 3 Comments at 12-13; FLAG Comments at 13; Global Crossing Comments at 30. The remaining five commenters did not comment on the role of the Executive Branch.

<sup>45</sup> Caribbean Crossing Comments at 2-3.

<sup>46</sup> C&W Comments at 15.

<sup>47</sup> Level 3 Comments at 12-13; FLAG Comments at 13; Global Crossing Comments (Continued...)

conditional licenses could possibly lead to uncertainty and delay in the development and construction of submarine cables. Accordingly, the FCC and Executive Branch should strive to approve virtually all applications within the streamlined processing period, thus ensuring that the use of conditional licenses is very rare.<sup>48</sup> Finally, in addition to any Report and Order adopted in this proceeding, C&W supports FLAG's request that the FCC and State Department issue a joint policy statement on their decision-making process for approving cable landing license applications.<sup>49</sup>

#### **IV. THE COMMISSION SHOULD REJECT THE *NOTICE'S* PROPOSED STREAMLINING INITIATIVE**

All parties submitting comments in this proceeding, including C&W, agree that the Commission should adopt a simpler streamlining process—for example, auto-grants based on the Section 214 model—than the process set forth in the *Notice*.<sup>50</sup> These commenters argue persuasively that the proposals in the *Notice* fail to achieve the Commission's streamlining objectives. The Commission initiated this streamlining proceeding to “ensure expeditious action on [cable landing license] applications” and “provide incentives for the development of facilities-based competition and capacity

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(Continued...)

at 30. C&W does not agree with Level 3's further suggestion that automatic approval should be assumed if not timely obtained.

<sup>48</sup> C&W also agrees with FLAG that the FCC should seek Executive Branch approval “within three days of placing the streamlined application on public notice” and likewise grant applications “within three days of its return from the Department of State.” FLAG Comments at 12-13.

<sup>49</sup> FLAG Comments at 13 n.23.

<sup>50</sup> See note 9, *supra*.

expansion to meet increasing demands.”<sup>51</sup> Commenters unanimously endorse these goals.<sup>52</sup>

Under the *Notice*, however, to qualify for expedited processing applicants must show they qualify for one of three options: (1) there are two or more independently-owned submarine cables in addition to the proposed cable serving the proposed route (“Competitive Route Option”); (2) the proposed submarine cable system will be controlled predominantly by new entrants (“Competitive Capacity Expansion Option”); or (3) sufficient pro-competitive arrangements exist regarding landing stations, competitive backhaul, upgrades and the use of capacity (“Pro-Competitive

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<sup>51</sup> *Notice*, ¶ 2.

<sup>52</sup> C&W Comments at 1 (“C&W strongly endorses the Commission’s goal of reducing license processing burdens and times.”); AT&T Comments at 1 (“AT&T . . . support[s] the Commission’s goal of regulatory ‘streamlining that reflects pro-competitive policies’ designed to ‘promote consumer benefits from increased cable capacity and facilities-based competition.’”); FLAG Comments at 2 (“FLAG. . . welcomes the Commission’s efforts to streamline the regulatory approval process”); Level 3 Comments at 1 (“Level 3 supports the Commission’s review of its regulatory framework regarding the licensing of submarine cables landing in the United States.”); Global Crossing Comments at 1 (“Global Crossing strongly supports the Commission’s decision to initiate this proceeding in order to streamline the cable landing licensing process . . . .”); Sprint Comments at 17; Caribbean Crossings Comments at 1; Viatel Comments at 2 (“Viatel strongly supports the Commission’s conclusion that the processing of applications for submarine cable landing licenses should be streamlined.”); WorldCom Comments at 1 (“WorldCom applauds the Commission for recognizing the need for streamlin[ing] its rules to ensure expeditious and predictable processing of applications filed under the Cable Landing License Act.”); 360networks at 1 (“360networks fully supports the Commission’s efforts to streamline the application process for obtaining a cable landing license.”); TyCom at i (“TyCom. . . strongly supports the Commission’s objective of streamlining the licensing process for submarine cables.”).

Arrangements Option”).<sup>53</sup> As discussed below, a number of parties agree with C&W that these three streamlining options will not realize the Commission’s stated streamlining expectations because they will create additional regulatory uncertainty and delays, will increase the costs of applying for a cable landing license, and may have the perverse and unintended effect of inhibiting competition in the submarine cable industry.

**A. The Proposed Streamlining Initiative Will Increase Regulatory Uncertainty By Requiring Complex And Burdensome Competitive Demonstrations**

The Commission itself has observed that streamlining initiatives generally should “draw bright lines so that it will be clear to potential applicants which [applications] are eligible for this streamlined process[ing]”<sup>54</sup> and that this standard is not met if the streamlining initiative requires “a complex, fact-driven determination about which applicants, in good faith, and the Commission may draw different conclusions.”<sup>55</sup> As C&W and many other commenters point out, the *Notice*’s streamlining approach does not meet this standard and likely will prove ineffective because it adds to, rather than reduces, regulatory uncertainty.

Virtually all commenters agree that “applicants satisfying the ‘streamlining’ criteria would need to submit highly complex and route-specific information that would

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<sup>53</sup> *Notice*, ¶ 38, 39.

<sup>54</sup> *1998 Biennial Regulatory Review - Review of International Common Carrier Regulations*, 14 FCC Rcd 4909 (1999).

<sup>55</sup> *Id.* at 4921.

require similarly complex and individual analyses by the Commission.”<sup>56</sup> Even Global Crossing acknowledges that the proposed streamlining options entail “fairly complex criteria” that “do not lend themselves to streamlined processing.”<sup>57</sup> The adoption of such complex and burdensome requirements will exacerbate existing regulatory uncertainty by making it harder for applicants to predict how their applications will be treated.<sup>58</sup> This increased regulatory uncertainty will affect applicants’ decisions on whether to move forward with construction of a submarine cable system, and likely will burden and slow the construction of new capacity.

**B. The Proposed Streamlining Initiative Will Increase Costs**

C&W agrees with the streamlining standard expressed by Commissioner Ness that “[t]he Commission should try to avoid inadvertently raising the costs of entering the undersea cable market in the course of ‘streamlining’ its processes.”<sup>59</sup> Here, the record

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<sup>56</sup> Level 3 Comments at 2. See also C&W Comments at 21 (“[E]ach streamlining option requires applicants to make additional, complex demonstrations in their cable landing license applications.”); Viatel Comments at 2; Global Crossing Comments at 12 (noting that the proposed streamlining initiative entails “fairly complex criteria.”); Sprint Comments at 9 (“The Commission’s various proposed tests to qualify for streamlining are . . . hard to define and enforce.”); WorldCom Comments at 6 (“WorldCom is concerned that these proposed streamlining options are overly complex and unnecessarily burdensome for potential applicants.”); 360networks Comments at 4; Tycom Comments at 4 (“[T]he Commission’s current streamlining proposals could be difficult to administer . . . .”); FLAG Comments at 2 (cautioning the FCC to “refrain from adopting extensive regulatory ‘options’”); AT&T Comments at 2. Only Caribbean Crossings did not comment on the complexity of the proposed streamlining options.

<sup>57</sup> Global Crossing Comments at 12-13.

<sup>58</sup> WorldCom Comments at 4-5.

<sup>59</sup> Notice, Separate Statement of Commissioner Susan Ness at 2.

reflects, and C&W agrees, that compliance with the streamlining proposals set forth in the *Notice* will increase application costs and thus not meet streamlining objectives.<sup>60</sup>

Each of the streamlining options requires an applicant to “conduct new analyses regarding competition prior to submitting an application.”<sup>61</sup> For example, under the proposed Competitive Route Option, applicants will need to submit information about the ownership structures of competitors’ submarine cables; and, under the Competitive Capacity Expansion Option, applicants will need to investigate the total wet link capacity on a route, as well as the percentage of that capacity controlled by competitors. As 360networks notes, “[s]uch information may be difficult or time-consuming to obtain.”<sup>62</sup> Because the *Notice*’s streamlining approach will require applicants to submit additional information in their cable landing license applications, the costs of obtaining these licenses will rise.<sup>63</sup>

**C. The Proposed Streamlining Initiative Defeats The *Notice*’s Objectives Of Reducing Regulatory Delays And Market Risks For Applicants**

C&W agrees with commenters that successful streamlined processing should “curtail petitions to deny or objections from competitors [seeking] to use the licensing process to impede entry.”<sup>64</sup> The proposed streamlining initiative, however, will “delay the granting of licenses” by increasing the time required for applicants to complete—

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<sup>60</sup> 360networks Comments at 4-6.

<sup>61</sup> *Id.* at 4.

<sup>62</sup> *Id.* at 5.

<sup>63</sup> *Id.*

<sup>64</sup> FLAG Comments at 4.



and for the Commission to review—applications for cable landing licenses.<sup>65</sup> Moreover, the *Notice*'s streamlining proposal will invite competitors to engage in regulatory “gamesmanship” to delay approval of an application.<sup>66</sup>

These delays, in turn, will enhance the significant risks already faced by potential entrants. For a potential new entrant into the undersea cable industry, “speed to market” is crucial.<sup>67</sup>

[An] entrant must reflect expected future deployments of lower cost cables into its present value calculations. Any significant delay between design and expected deployment will greatly reduce expected returns . . . . Absent the ability to move quickly from design to deployment, a[n] entrant risks the possibility of entry by subsequent cables that employ faster technology permitting even greater transmission speeds.<sup>68</sup>

Unfortunately, the longer application processing time associated with the *Notice*'s proposal could undermine the degree of regulatory certainty necessary to “facilitate[ ] financing of the cable project and ‘pre-sales’ of capacity . . . .”<sup>69</sup>

With its inherent delays and added market risks, adoption of the *Notice*'s proposed approach will undermine the FCC's objective of expediting application

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<sup>65</sup> *Id.* at 7.

<sup>66</sup> AT&T Comments at 5 (“Regulation of entry is . . . an invitation for strategic misuse by competitors); Viatel Comments at 6-8 (noting that Options 1 and 2 “invite[ ] significant factual disputes between applicants and opponents).

<sup>67</sup> See *Notice*, ¶ 5. See also C&W Comments at 19; AT&T Comments at 6.

<sup>68</sup> AT&T Comments at 4-5.

<sup>69</sup> FLAG Comments at 11.

processing,<sup>70</sup> serve as a “potent entry barrier,” and deny consumers the benefits of lower prices, and better quality and new services.<sup>71</sup> In contrast, adoption of a “bright line” approach such as that championed by C&W will increase the regulatory certainty surrounding a submarine cable project thereby “mak[ing] access to financing easier and the proposed cable more appealing to potential customers”—which would, in turn, “promote the rapid build-out and deployment of infrastructure.”<sup>72</sup>

**D. The Proposed Streamlining Initiative May Prove Counterproductive**

For a streamlining initiative to be effective, it must be used by applicants that qualify for streamlined processing. However, the streamlining initiative outlined in the *Notice* will not achieve this result. Under the proposed streamlining initiative, it will be “difficult to predict” which applications will be streamlined and which will not.<sup>73</sup> C&W agrees with WorldCom that the significant burdens associated with obtaining expedited processing under the proposed streamlining options likely will cause many applicants to forego streamlining and instead file a simpler and shorter non-streamlined application, even where their application would otherwise qualify for streamlining under one of the proposed streamlining options.<sup>74</sup> As WorldCom notes “[t]he streamlining rules as

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<sup>70</sup> 360networks Comments at 2.

<sup>71</sup> AT&T Comments at ii.

<sup>72</sup> FLAG Comments at 3-4.

<sup>73</sup> Global Crossing Comments at 13. Obviously, the FCC should lead by example to encourage foreign regulators to adopt simple predictive and transparent rules.

<sup>74</sup> C&W Comments at 22-23; WorldCom Comments at 7-8.

proposed in the NPRM could be seriously undermined if applicants are discouraged from taking advantage of streamlining."<sup>75</sup>

If the Commission adopts the *Notice*'s proposed streamlining initiative, many applicants likely will be deterred from seeking streamlined processing. Additional time spent preparing the application and factual disputes regarding competitive demonstrations may delay streamlined processing more than the current 6 months, on average, that it takes to process non-streamlined applications. The potential that those applicants eligible for streamlined processing will not take advantage of it—thereby undermining the FCC's objectives of expediting processing—is very real. In contrast, the automatic grant approach advocated by C&W, AT&T, 360networks, and Sprint, by employing a bright line test that eliminates the potential for additional regulatory delays, would encourage applicants to seek streamlined processing for all eligible applications.

## **V. THE COMMISSION SHOULD REJECT BOTH OF GLOBAL CROSSING'S PROPOSED APPROACHES**

As discussed below, Global Crossing has submitted two proposals to the Commission—the first of which is discussed in the *Notice*,<sup>76</sup> and the most recent of which is set forth in Global Crossing's comments. The adoption of either of these proposals would place equity owners of consortia submarine cables at a competitive disadvantage vis-à-vis equity owners of entrepreneurial submarine cables. C&W urges the Commission to reject both of Global Crossing's proposals. As discussed below, the

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<sup>75</sup> WorldCom Comments at 7-8. See also C&W Comments at 22-23.

<sup>76</sup> *Notice*, ¶ 37.

Commission is responsible for protecting competition, not competitors. Moreover, the record in this proceeding indicates that Global Crossing stands alone in its advocacy of these proposals.

**A. Global Crossing Previously Submitted A Proposal To The Commission, And Now Proposes A Different Approach**

At different times this year, Global Crossing has urged the Commission to adopt two different proposals, one set forth in a Global Crossing *ex parte* letter and one set forth in its comments in this proceeding. In its comments, Global Crossing recommends that the Commission adopt an alternative proposal. Global Crossing proposes that applications that satisfy any one of three criteria “be presumed to be in the public interest and be routinely granted.”<sup>77</sup> Under this proposal, an application will be eligible for expedited processing if: (1) the proposed submarine cable is on a “thin route;” (2) the cable landing parties on the U.S. end have a combined share of no more than 35 percent of the active half circuits, including half circuits of full circuits, on the U.S. side of the route; or (3) the proposed submarine cable is on a route that the FCC has previously determined to be competitive.<sup>78</sup>

Global Crossing previously proposed that the FCC adopt a rule that denied cable landing licenses to applicants that have a combined share of more than 35 percent of the active half circuits on the U.S. side of the route served by the proposed cable.<sup>79</sup> In

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<sup>77</sup> Global Crossing Comments at 11.

<sup>78</sup> *Id.*

<sup>79</sup> The *Notice* seeks comment on the initial proposal, not the more recent Global Crossing proposal. *Notice*, ¶ 37.

this initial proposal, Global Crossing also proposed that the FCC forbear from applying this rule to submarine cables serving “thin routes” and submarine cables serving markets that applicants demonstrated were competitive.<sup>80</sup>

The initial proposal did not gain acceptance among participants in the submarine cable industry. Global Crossing’s latest proposal moves away from outright denial of applications not meeting these requirements to the denial of expedited processing to such applications. Global Crossing’s views present a “moving target” with ephemeral policy goals that have little underlying consistency making it difficult to craft any sensible relief, should the Commission desire.<sup>81</sup> In the end, however, Global Crossing’s most recent proposal will have the same effect as its previous one. By denying streamlined processing to the category of applications discussed above, the proposal will effectively delay approval to such applications.

**B. The Commission Should Reject Both Of Global Crossing’s Proposals Because They Do Not Simplify Processing And Impede, Rather Than Promote, Cable Competition**

The record clearly indicates that Global Crossing stands alone in its advocacy of the two proposals discussed above.<sup>82</sup> Neither of these proposals will simplify the

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<sup>80</sup> *Id.*

<sup>81</sup> In fact, Global Crossing acknowledges that its proposals present a “moving target”—stating that “the proposal it has previously advanced, *with some modifications*, would provide the most effective means of achieving the benefits of a safe harbor approach.” Global Crossing Comments at 11 (emphasis added).

<sup>82</sup> While C&W supports auto-grant or streamlined processing of applications to serve “thin routes” and applications to serve routes previously determined to be competitive, it believes these streamlining categories are too narrow. The entire undersea cable industry is competitive and the addition of a cable on any route is (Continued...)

application process. Further, adoption of either proposal may have the perverse effect of inhibiting competition.

C&W agrees with AT&T and Sprint's concern that the 35 percent restriction could have anticompetitive effects. Under the two Global Crossing proposals, an application either must be denied or is not eligible for streamlined processing if the applicant(s) control more than 35 percent of the existing capacity on a route. The adoption of either of Global Crossing's proposals will effectively weaken the position of consortia cables, and strengthen the position of entrepreneurial cables like those owned by Global Crossing.<sup>83</sup> However, many new entrants participate in the undersea cable industry through consortia cables and the public interest is not served by artificially handicapping entry options as urged by Global Crossing.

Moreover, "[t]he Commission is not at liberty . . . to subordinate the public interest to the interest of equalizing competition among competitors."<sup>84</sup> Instead, the FCC's statutory duty is "to protect efficient competition, not competitors."<sup>85</sup> Put

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(Continued...)

always pro-competitive. Thus, C&W believes that all applications should be auto-granted or eligible for streamlined processing.

<sup>83</sup> AT&T Comments at 30-34 ("At bottom, Global Crossing's proposal is nothing more than a plea to the Commission to 'level the playing field' by handicapping more efficient rivals."); Sprint Comments at 8 ("If enacted, the proposals would complicate the lives of potential submarine cable applicants, especially consortium applicants.").

<sup>84</sup> *SBC Communications Inc. v. FCC*, 56 F.3d 1484, 1491 (D.C. Cir. 1995) (citations and internal quotations omitted).

<sup>85</sup> *In the Matter of Bell Atlantic Mobile Sys. Inc. and NYNEX Mobile Communications Co.*, 12 FCC Rcd 22280, 22288 (1997) (Memorandum Op. and Order).

differently, Global Crossing confuses its private interest with the public interest that the FCC is charged to uphold. The record simply does not support the notion that Global Crossing's proposal would benefit consumers, or even any provider other than Global Crossing.

Global Crossing stands alone in its advocacy of the 35 percent restriction. Although its proposal is designed to handicap consortia cables, Global Crossing has failed to gain even the support of other entrepreneurial cable owners, such as C&W, who would likely benefit from adoption of its proposal.<sup>86</sup> No other entrepreneurial cable owner filed comments in support of the initial Global Crossing proposal discussed in the *Notice*. In fact, some filed comments opposing it.<sup>87</sup> Thus, the record in this proceeding unambiguously indicates that the Commission should reject either version of Global Crossing's streamlining proposal.

## **VI. THE COMMISSION SHOULD ALSO STREAMLINE OTHER ASPECTS OF ITS CABLE LANDING LICENSE REGULATION**

### **A. Only Landing Station Owners Should Be Applicants**

C&W reaffirms its request that the Commission limit the applicant pool to landing parties and notes that Level 3 and Sprint also support this approach.<sup>88</sup> This is the "most

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<sup>86</sup> As C&W itself has found, the two models can operate side by side, and compete with each other for partners, traffic and landing points.

<sup>87</sup> Level 3 Comments at 8.

<sup>88</sup> Sprint Comments at 20 ("Sprint agrees that U.S. landing license applicants should include entities who are landing station owners provided that the Commission meant to limit such inclusion to owners of U.S. [as opposed to foreign] landing stations."); Level 3 Comments at 17.

appropriate reading” of the Cable Landing License Act—the act requiring cable landing licenses in the first instance—because only cable landing station owners “land and operate” the submarine cables.<sup>89</sup>

In contrast, FLAG recommends that both owners of cable landing stations and “entitie[s] having *de facto* control of the cable system”—based on a 25 percent standard—should be applicants.<sup>90</sup> Global Crossing would further include as applicants those owners with as little as a 5% ownership interest.<sup>91</sup> As FLAG notes, however, requiring *de minimis* owners of submarine cable capacity to be applicants “simply goes too far.”<sup>92</sup> Similarly, although AT&T supports a “bright line rule [that] frees smaller carriers that obviously have no influence over operation from the burden of having to be a party to a license application,” AT&T does not indicate at which level relevant influence over operations should be determined.<sup>93</sup> Accordingly, the Commission should adopt the only approach that is both supported by statute and unequivocal—requiring only landing station owners to be applicants.

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<sup>89</sup> Sprint Comments at 20-21 (noting that landing station owners “take the cable from the beach joint to the cable station on dry land” and “operate the electrical equipment that powers and lights the cable system as well as the multiplexers and cross-connects that allow a cable to function. In short, they both land and operate the cable.”); C&W Comments at 24 (finding the view that cable landing ownership need not be licensed “supported by the CLLA, which expressly requires a license to ‘land or operate’ a submarine cable but not to own cable capacity.”).

<sup>90</sup> FLAG Comments at 14-15.

<sup>91</sup> Global Crossing Comments at 41.

<sup>92</sup> FLAG Comments at 15.

<sup>93</sup> AT&T Comments at 68.



## **B. Regulatory Fees Should Be Reduced**

The only three commenters to address the issue of regulatory fees concurred with C&W's recommendation that modification of those fees pursuant to Section 9(B)(3) would serve the public interest.<sup>94</sup> These commenters urge the Commission to commence a future proceeding to reduce "exorbitant" and "excessive" fees,<sup>95</sup> and place a proportionate share of the regulatory fee burden on resellers in addition to submarine cable owners.<sup>96</sup>

## **C. An "Opt Out" Licensing Approach Should Be Adopted**

Most commenters agree with C&W that the FCC should replace its requirement that licensees affirmatively accept license conditions with an "opt out" or "negative option" approach.<sup>97</sup> Under this approach, licenses would automatically become effective 30 days after grant unless the applicant informs the Commission otherwise. "Opt-out" licensing makes sense because there is no indication that "applicants have disputed any of the conditions routinely imposed on landing licenses by the

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<sup>94</sup> Level 3 Comments at iv ("If the Commission streamlines its review process, it should review its licensing and regulatory fees on submarine cable license applications to reflect the new cost of regulation."); Global Crossing Comments at 42-43 ("Global Crossing believes that, should the Commission adopt streamlining measures, the public interest would indeed be served by appropriate modifications of regulatory fees."); C&W Comments at 25 ("The public interest would be served by the FCC proposing to modify its regulatory fee structure so that the fees paid by licensees are no longer tied to the capacity of their cables.").

<sup>95</sup> C&W Comments at 25; Global Crossing Comments at 43.

<sup>96</sup> Global Crossing Comments at 42-43.

<sup>97</sup> Five commenters support eliminating the 30 day acceptance requirement. Sprint Comments at 19; Global Crossing Comments at 40; WorldCom Comments at 17; (Continued...)

Commission, or . . . . has refused the license as granted.”<sup>98</sup> The changes also serve the public interest by “reduc[ing] confusion and transaction costs”<sup>99</sup> and the “burdens on both the licensee and Commission staff”<sup>100</sup> associated with the present policy.

Essentially, commenters agree that this superfluous “paperwork” should be eliminated.

**D. The Disclosure Requirements For Interlocking Directorates With A Foreign Carrier Should Be Eliminated**

C&W supports Global Crossing’s suggestion that the FCC eliminate the requirement that applicants disclose their “interlocking directorates” with foreign carriers.<sup>101</sup> Elimination of this requirement in the context of cable landing license applications is consistent with the FCC’s repeal of Part 62 of the Rules and forbearance from Section 212 of the Act, which generally prohibited a person from serving as an officer or director of more than one common carrier.<sup>102</sup> At the time the disclosure requirement was eliminated for Part 62 applications, however, the FCC indicated there

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(Continued...)

AT&T Comments at 67; C&W Comments at 23-24.

<sup>98</sup> Sprint Comments at 19. See also AT&T Comments at 67 (“most carriers do not dispute the routine conditions imposed by the Commission”). C&W does not express support for codification of routine conditions in a rule. Should the FCC consider codification of such conditions, C&W urges it to make public, and seek comment on, the exact language of the conditions it proposes to codify.

<sup>99</sup> Global Crossing Comments at 40.

<sup>100</sup> WorldCom Comments at 17. See TyCom Comments at 14 (noting that the requirement to submit a license acceptance letter is not particularly “burdensome” but does “generate unnecessary paper for the Commission”).

<sup>101</sup> Global Crossing Comments at 32-33; see 47 C.F.R. § 1.767(8) (incorporating 47 C.F.R. § 63.18(h)).

<sup>102</sup> Global Crossing Comments at 33; *1998 Biennial Regulatory Review—Repeal of* (Continued...)

was insufficient notice similarly to repeal the requirement as it pertains to Part 63 of the Rules and cable landing license applications. This proceeding has been initiated to streamline the cable landing license application process and, accordingly, now is the appropriate time to remove this unnecessary requirement.

**E. The Commission Should Adopt Application Forms And Electronic Filing Options**

Because the goal of this streamlining exercise is to make the process simpler and more effective for the industry, C&W joins Level 3 and Caribbean Crossing's support for electronic filing of applications, provided there is also "an alternative filing procedure that will work effectively and rapidly."<sup>103</sup> Such an alternative procedure is necessary in the event of incompatible computer systems or attachments that are too large to be filed electronically. So too, C&W supports Level 3's suggestion that the FCC "develop an application procedure conducive to a form format."<sup>104</sup>

**VII. CONCLUSION**

C&W appreciates the Commission's interest in expediting the processing of cable landing license applications in order to "further promote consumer benefits from increased cable capacity and facilities-based competition."<sup>105</sup> As discussed above, a general consensus has developed among participants in the submarine cable industry

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*Part 62 of the Commission's Rules*, 1999 WL 503621, \*6 (Report and Order).

<sup>103</sup> Caribbean Crossing Comments at 3; Level 3 Comments at 10.


<sup>104</sup> Level 3 Comments at 10.

<sup>105</sup> Notice, ¶ 3.

that a bright line test for determining eligibility for streamlined processing will best ensure that the objectives set forth in the *Notice* are achieved. Accordingly, C&W respectfully requests that the FCC adopt a broad streamlining initiative modeled after the streamlined Section 214 process.

Respectfully submitted,

CABLE AND WIRELESS

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September 20, 2000

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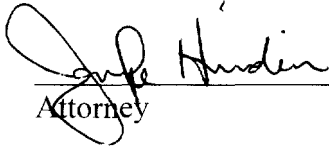
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